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**John W. Kure**  
Executive Director - Federal Regulatory



*Ex Parte*

September 9, 2003

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, SW, Room TW-A325  
Washington, DC 20554

Re: In the Matter of Federal-State Joint Board on Universal Service,  
CC Docket No. 96-45

Dear Ms. Dortch:

Today, John Morabito, Michael Rubin and I, all representing Qwest Communications International Inc., met with William Maher, Carol Matthey, William Scher and Narda Jones, all of the Wireline Competition Bureau. The purpose of the discussion was to discuss the Tenth Circuit remand<sup>1</sup> of the high cost universal service support program for non-rural carriers. The attached document was used during the discussion.

Pursuant to FCC Rule 47 C.F.R. § 1.49(f), this *Ex Parte* is being filed electronically via the Electronic Comment Filing System for inclusion in the public record of the above referenced docket pursuant to FCC Rule 47 C.F.R. § 1.1206(b)(2).

Sincerely,

/s/ John W. Kure

cc: William Maher (via e-mail at [william.maher@fcc.gov](mailto:william.maher@fcc.gov))  
Carol Matthey (via e-mail at [carol.matthey@fcc.gov](mailto:carol.matthey@fcc.gov))  
William Scher (via e-mail at [william.scher@fcc.gov](mailto:william.scher@fcc.gov))  
Narda Jones (via e-mail at [narda.jones@fcc.gov](mailto:narda.jones@fcc.gov) )

Attachment

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<sup>1</sup> Qwest Corp. v. FCC, 258 F.3d 1191 (10<sup>th</sup> Cir. 2001)

# **Complying with the Tenth Circuit's Remand**

## **The Joint Board's Recommended Order Ignores the Tenth Circuit's Mandates**

### **Tenth Circuit Remand Decision**

In part the Tenth Circuit remanded the FCC's Ninth Report and Order due to its failure to:

1. Define the terms "reasonably comparable" and "sufficient";
2. Justify sufficiently the funding benchmark at 135%;
3. Provide inducements for states to implement universal services

### **Joint Board's Recommended Decision**

The recommendation to essentially re-adopt the Order remanded by the Tenth Circuit unlawfully maintains the status quo

1. The Joint Board failed to demonstrate the comparability of rural and urban rates

✓ Joint Board did not even define reasonably comparable

✓ Inappropriately relied upon data from the GAO report in trying to show that rates are reasonably comparable today

Use of national averages for rural, suburban and urban rates is very misleading. For example, WY has \$35 rate after universal support in the highest cost zone while NM has as \$14 statewide rates (recently changed).

✓ Joint Board continues to rely on implicit subsidies which are disappearing with competition

2. The Joint Board inappropriately continues to recommend a 135% benchmark

✓ The declaration of Aniruddha Banerjee, Ph.D. concludes that neither of the statistical methods relied upon by the Joint Board provide a basis for its findings

✓ His cluster analysis suggests the benchmark should be in the 107-117 percent range

3. The Joint Board failed to provide sufficient inducements to states

- ✓ Not clear how the expanded certification process would work
- ✓ Only give funding to a few states
- ✓ The lack of federal support for the remaining states provides no incentives for states to take action
- ✓ The Commission is required to develop mechanisms to induce adequate state action

### **Satisfying the Court's Mandate**

Qwest proposed a two-tiered mechanism that will help the Commission define "reasonably comparable," justify the benchmark, and create state inducements while removing implicit subsidies.

At a minimum the Commission must create an inducement by increasing the number of states eligible for federal funding by either

- Creating an urban benchmark
- Lowering the 135% trigger

### **Conclusion**

The Commission must resolve the Court's issues, not simply more fully explain